IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/09/2002

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

Writ Petition No.34479 of 2002
and
W.P.M.P.No.51430 of 2002

S.Ramanujam ... Petitioner

-Vs-

1.State of Tamil Nadu
rep.by the Secretary to Government
Highways Department, Fort St.George
Chennai-9.

2.Chief Engineer (General)
Highways Department
Chepauk, Chennai-5.

3.Divisional Engineer
Highways Project, Division-1
Madurai-625 002.

4.Tamil Nadu Administrative
Tribunal, rep.by the Registrar
High Court Compound, Chennai-104. ... Respondents

Petition under Article 226 of the Constitution of India praying for the issue of a writ of certiorari calling for the records connected with the show cause notice issued by the second respondent bearing Memo No.3019/CON.III/92-34 dated 10.04.2002 and confirmed by the orders of the 4th respondent made in O.A.No.2563/2002 dated 24.07.2002 and quash the same.

!For Petitioner : Mr.K.Chandru, Senior Counsel
for M/s.K.M.Ramesh

^For Respondents : Mr.S.T.S.Murthi
RR 1 to 3 : Special Government Pleader

:O R D E R

(Order of the Court was made by V.S.SIRPURKAR, J.)

Rule returnable forthwith. Learned Special Government Pleader takes notice. Heard finally with the consent of the parties.

2. The present writ petition is by the petitioner who has lost in his original application before the Tamil Nadu Administrative Tribunal (hereinafter referred to as 'the tribunal'). Some facts will be necessary to understand the controversy involved.

3. The petitioner S.Ramanujam was trapped by the Vigilance and Anti Corruption Wing while he was working as Junior Engineer at Srivilliputhur. A criminal case was instituted against him. This was in 1993 . The petitioner was due to retire on 30.4.1997 on attaining the age of superannuation. However, he was not so allowed to retire from service using the powers under Rule 56(1)(c) of the Fundamental Rules. Thereafter, probably because the petitioner did not get the subsistence allowance or provisional pension, as the case may be, the petitioner approached the tribunal by way of an original application. This was in the year 2002. The said original application was registered as O.A.No.1035 of 2002. The tribunal allowed that application and held that he was entitled to the subsistence allowance till such time as he was finally dismissed. However, the tribunal also noted the fact that in the mean time, by the judgment dated 28.6.2001 the Chief Judicial Magistrate, Srivilliputhur had convicted the petitioner and though he had filed an appeal against the said conviction before the High Court of Madras, there was no stay of the conviction judgment. The tribunal then proceeded to hold that till such time as the petitioner is not dismissed and for that purpose a show cause notice is issued to him, the petitioner was entitled to have the benefit of subsistence allowance. Probably taking a cue from this judgment, a show cause notice seems to have been issued by the Chief Engineer on 10.4.2002. This show cause notice came to be challenged subsequently by the petitioner by way of O.A.No.2563 of 2002 and the tribunal, however, dismissed the same taking the view that once there was a conviction in the criminal case for offences under sections 7,10, and 13 of the Prevention of Corruption Act, the show cause notice could be given by the department for his dismissal.

4. Challenging the judgment, the learned Senior Counsel Mr.Chandru invites our attention to Rule 56(1)(c). The learned counsel, relying on that rule, contends that the only reason why the petitioner was not allowed to retire was the pendency of departmental enquiry against him. For this, the learned counsel invites our attention to the Government Order dated 29.4.1997 and more particularly at the portion quoted below:-

"Now, therefore, it is hereby ordered under Fundamental Rule 56(1)(c) that the said Thiru S.Ramanujam (now under suspension) shall be permitted to retire on his reaching the age of superannuation on 30.4.199 7 A.N. but shall be retained in service until the enquiry into the charges of criminal misconduct pending against him is concluded and final orders passed thereon by the competent authority."

Learned senior counsel argues that if the petitioner was retained in

the service only for the purpose of completing the disciplinary enquiry, unless that disciplinary enquiry is held, conducted and finalised, there will be no question of issuing the show cause notice based on the conviction of the petitioner for the offences under the Prevention of Corruption Act. The senior learned counsel further argues that by passing the orders under Rule 56(1)(c) of the Fundamental Rules, the matters are taken out of the control of the disciplinary authority – in this case the Chief Engineer – and would remain essentially with the Government, and therefore, any show cause notice given by the Chief Engineer as in this case, would be without authority.

5. The learned Special Government Pleader, however, opposes and points out that under the Tamil Nadu Civil Services (Discipline and Appeal) Rules, (hereinafter referred to as the 'Discipline and Appeal Rules'), there is a specific power under Rule 17(b) read with 17(c) that any government servant can be dismissed merely on the basis of the conviction for an offence, by the criminal court.

6. The question, therefore, is as to whether the power under Rule 1 7(b) read with 17(c) can be used by the departmental authority, in this case the Chief Engineer, who is also admittedly the disciplinary authority of the petitioner, in the wake of the orders passed under Rule 56(1)(c), whereby the petitioner was not allowed to retire. In short, whether the user of the powers under Rule 56(1)(c) divests the disciplinary authority of his power to dismiss the government employee?

7. We are afraid, the answer to this question must depend upon the inter se comparison between the powers under Rule 56(1)(c) of the Fundamental Rules and Rule 17(b) and 17(c) of the Discipline and Appeal Rules. In our opinion, the Discipline and Appeal Rules operate in entirely different spheres, whereas Rule 56(1)(c) has an entirely different area of operation. Rule 56(1)(c) is operated only in a contingency, where a government servant cannot be allowed to retire because his retirement would entitle him for his pension and he could then be dealt with only under Rule 9 of the Pension Rules, where it is contemplated that the government servant should not be allowed to have the benefit of pension because of his misconduct. The authorities, under Rule 56(1)(c) did not allow him to retire and kept on paying him the provisional pension in the nature of subsistence allowance. That is the only eventuality and exigency under which Rule 56(1)(c) operates. Even if this rule is operated upon, and in this case which has been operated upon by the Government, which is the only authority to operate the rule and operate the powers thereunder, in our opinion, it does not divest the disciplinary authority of his powers, which, he independently has under the Discipline and Appeal Rules under Rule 17(b) read with 17(c). The powers are absolutely independent and cannot be controlled merely because the government has taken the step of not allowing the petitioner to retire. If a view is taken that Rule 56(1)(c) controls the Discipline and Appeal Rules, devastating results would follow. Then, the factum of the conviction of the government servants for an offence would become redundant and irrelevant, because in such a case the Government will have to necessarily continue with the enquiry, as the petitioner is claiming in this case. Therefore, firstly on the question of jurisdiction we ar e of the clear opinion that the Chief Engineer could not

be said to be divested of his powers under Rule 17(b) and 17(c) of the Discipline and Appeal Rules merely because the powers under Section 56(1)(c) were exercised by the government. All that was obtained by the exercise of the power was not allowing the petitioner to retire from the service. It only acts as an enabling provision. Therefore, insofar as the other argument of jurisdiction is concerned, we are of the clear opinion that the Chief Engineer in this case had the necessary powers.

8. The learned Senior Counsel also commented upon the first order of the tribunal, wherein the tribunal had expressed that a show cause notice could have been given and the petitioner could have been dismissed on the basis of his conviction. The learned senior counsel said that the tribunal had clearly exceeded its jurisdiction in making the obse rvations. We do not wish to go into that controversy because, admittedly that order was not challenged by the petitioner by any proceedings. We will not, therefore, allow that order to be commented upon in these proceedings.

9. The other argument is based upon Rule 9(2)(a) of the Tamil Nadu Pension Rules. The rule is as under:-

"The departmental proceeding referred to in sub-rule (1), if instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:
Provided that where the departmental proceedings are initiated by an authority subordinate to the Government, that authority shall submit a report recording its finding to the Government."
(emphasis supplied)

10. Relying on this rule, the learned Senior counsel argues that since the petitioner was not allowed to retire but was continued in the service only on account of pending enquiry, now it is incumbent on the Government to complete the enquiry and send the findings to the Government for being acted upon.

11. In the first place, in our opinion, Rule 9 does not come into play at all. According to us, Rule 9 applies only in case of persons where the concerned government servant retires finally which is clear from the emphasised words. In the present case, though the wording is used that he is allowed to retire, in our opinion, the wording has to be read along with the words following, which clearly convey the meaning that he was not allowed to retire finally. All that was obtained by that order was not allowing him to retire which if done, would have enabled him to claim the benefits of a retired government employee. Therefore, it cannot be said that the petitioner was factually allowed to retire. The subsequent sentence that "he shall be retained in the service until the enquiry....." are clear enough to express the intention of the government. Again, by the very language of the rule, there is nothing to suggest that even this rule would operate against and control the independent power of the disciplinary authority under Rule

17(b) and 17(c) of the Discipline and Appeal Rules.

12. Some light can be had from the provisions of Rule 9(1)(b), which is as under:-

"In case there is any pecuniary loss caused to the Government, to any local body or to any co-operative society comprising of Government servants and registered under the Tamil Nadu Co-operative Societies Act, 1961, and if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement, the Government shall also have the right of ordering recovery from the pension of the whole or part of the pecuniary loss caused by such grave misconduct or negligence; Provided that the Tamil Nadu Public Service Commission shall be consulted before any final orders under this clause is passed."

The language here suggests that the rule contemplates a "pensioner", meaning thereby a government servant who has "finally retired" and suggests that if there is any judicial proceeding regarding his misconduct during service where he is found guilty, his pension may be affected or a recovery could be ordered against him. Significantly, unlike Rule 9(2)(a) the word used is "pensioner" and not "government servant".
13. In this case, the judicial proceedings were in time as per Rule 9(6)(b). The said criminal proceedings which started during his service, ultimately were finalised after the date on which he ordinarily would have retired but he was never allowed to retire finally. A final retirement is a sine qua non for operation of Rule 9(2)(a) as also for Rule 9(1)(b), which never occurred in petitioner's case. Therefore, this would be a case where the petitioner was convicted during his service on the basis of the criminal proceedings which had already started against the petitioner when he was in service. He was not a pensioner and hence Rule 9(1)(b) would not apply. In our opinion, the pendency of the criminal proceedings and its finalisation against the petitioner while he was in service would clearly excite the powers of the disciplinary authority under Rule 17(b) read with 17(c). In our opinion, there could be no application of Rule 9 of the Pension Rules to the case of the petitioner. The petition has no merits and the same is dismissed, but without any orders as to the costs. Consequently, connected W.P.M.P.No.51430 of 2002 is also dismissed.

Index : Yes
Website : Yes

kst.

To :

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V.S.SIRPURKAR, J.
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